

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Reorganized Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

MARC S. KIRSCHNER, AS LITIGATION
TRUSTEE OF THE LITIGATION SUB-
TRUST,

Plaintiff

v.

JAMES D. DONDERO; MARK A. OKADA;
SCOTT ELLINGTON; ISAAC LEVENTON;
GRANT JAMES SCOTT III; FRANK
WATERHOUSE; STRAND ADVISORS, INC.;
NEXPOINT ADVISORS, L.P.; HIGHLAND
CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT
TRUST AND NANCY DONDERO, AS
TRUSTEE OF DUGABOY INVESTMENT
TRUST; GET GOOD TRUST AND GRANT
JAMES SCOTT III, AS TRUSTEE OF GET
GOOD TRUST; HUNTER MOUNTAIN
INVESTMENT TRUST; MARK & PAMELA
OKADA FAMILY TRUST – EXEMPT TRUST
#1 AND LAWRENCE TONOMURA AS
TRUSTEE OF MARK & PAMELA OKADA
FAMILY TRUST – EXEMPT TRUST #1;
MARK & PAMELA OKADA FAMILY TRUST
– EXEMPT TRUST #2 AND LAWRENCE
TONOMURA IN HIS CAPACITY AS
TRUSTEE OF MARK & PAMELA OKADA
FAMILY TRUST – EXEMPT TRUST #2; CLO
HOLDCO, LTD.; CHARITABLE DAF
HOLDCO, LTD.; CHARITABLE DAF FUND,
LP.; HIGHLAND DALLAS FOUNDATION;
RAND PE FUND I, LP, SERIES 1; MASSAND
CAPITAL, LLC; MASSAND CAPITAL, INC.;

Adv. Pro. No. 21-03076-sgj

**DEFENDANTS JAMES DONDERO,
DUGABOY INVESTMENT TRUST,
GET GOOD TRUST, AND STRAND
ADVISORS, INC.’S MOTION TO
DISMISS**

SAS ASSET RECOVERY, LTD.; AND CPCM,
LLC,

Defendants.

**DEFENDANTS JAMES D. DONDERO, DUGABOY INVESTMENT TRUST,
GET GOOD TRUST, AND STRAND ADVISORS, INC.’S
MOTION TO DISMISS**

James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (collectively, the “Dondero Defendants”), defendants in the above-captioned adversary proceeding (the “Adversary Proceeding”), hereby submit this Motion to Dismiss (the “Motion”). In support of this Motion, the Dondero Defendants respectfully state as follows.

The Court should dismiss all counts against the Dondero Defendants, either in whole or in part, for multiple reasons. First, the Court lacks post-confirmation jurisdiction to adjudicate the Adversary Proceeding, which was filed more than eight months after confirmation of the confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (then “Plan”) and which asserts a myriad of non-core, state-law claims that can have no conceivable impact on the implementation or execution of the confirmed Plan.

Second, the Litigation Trustee lacks standing to pursue many of the claims asserted against the Dondero Defendants.

Third, the applicable statutes of limitations bar the claims either in whole or in part.

Finally, the Complaint fails to sufficiently plead the requisite elements of the claims asserted.

WHEREFORE, the Dondero Defendants respectfully request that the Court grant the Motion; dismiss Counts Nos. I–VIII, X, XIV–XIX, XXII–XXIII, XXV–XXVI, and XXXI–XXXV as to the Dondero Defendants, with prejudice; grant the Dondero Defendants such further and

relief to which they are entitled; and enter an order, substantially in the form of the attached hereto as Exhibit A.

Dated: March 23, 2022

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Amy L. Ruhland

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*Attorneys for Defendants James Dondero,
Dugaboy Investment Trust, Get Good Trust,
and Strand Advisors, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 23, 2022, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland

Amy L. Ruhland (Rudd)

EXHIBIT A

Proposed Order

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LP.; HIGHLAND DALLAS FOUNDATION;
RAND PE FUND I, LP, SERIES 1; MASSAND
CAPITAL, LLC; MASSAND CAPITAL, INC.;

SAS ASSET RECOVERY, LTD.; AND CPCMC,
LLC,

Defendants.

**ORDER GRANTING DEFENDANTS JAMES D. DONDERO, DUGABOY
INVESTMENT TRUST, GET GOOD TRUST, AND STRAND ADVISORS, INC.'S
MOTION TO DISMISS**

Upon consideration of the Motion of the Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (the “Dondero Defendants”), and the attached exhibits to the Declaration of Amy L. Ruhland in Support of Memorandum of Law in Support of the Motion to Dismiss of the Dondero Defendants, any response thereto, the pleadings, and the arguments presented by the parties before this Court, the Court hereby orders that the Motion is GRANTED.

Pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, the Court hereby dismisses with prejudice the following Counts as against the Dondero Defendants: Counts Nos. I–VIII, X, XIV–XIX, XXII–XXIII, XXV–XXVI, and XXXI–XXXV.

SO ORDERED.

Dated: _____, 2022

Honorable Stacey G. C. Jernigan
United States Bankruptcy Judge

End of Order

Proposed form of order prepared by:

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